

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Item 36 I. D. #5008

RESOLUTION E-3953

November 18, 2005

R E S O L U T I O N

Resolution E-3953. San Diego Gas and Electric (SDG&E) revenue requirement associated with Ramco Generating One (Ramco), including modifications to SDG&E's Non-fuel Generation Balancing Account and Energy Resource Recovery Account approved.

By Advice Letter 1711-E, Filed on July 26, 2005.

SUMMARY

This resolution approves SDG&E's request updating its revenue requirement associated with the purchase of Ramco, including modifications to SDG&E's Non-fuel Generation Balancing Account (NGBA) and Energy Resource Recovery Account (ERRA).

Resolution E-3896 directed SDG&E to file an advice letter prior to the in-service date of the Ramco to true-up the base purchase price and to include detailed supporting documentation showing that the base purchase price adjustments are consistent with the provisions of the purchase Agreement approved in resolution E-3896. The resolution also directed SDG&E to use the currently applicable return on equity (ROE) of 10.37% into the fixed revenue requirement calculation. (Resolution E-3896, p.8)

This Resolution approves the updated revenue requirement associated with the purchase of Ramco, including modifications to SDG&E's NGBA and ERRA.

BACKGROUND

On June 9, 2004, the Commission issued D.04-06-011. In that decision, the Commission approved the Term Sheet between SDG&E and Ramco, where Ramco agreed to design, permit, and construct a 45 MW combustion turbine (CT) in Chula Vista, California. The Commission found that the Ramco acquisition

was supported by the record, and stated, "We approve the terms and conditions in the Term Sheet ... and we will approve it [the contract] when it is submitted to the Commission. However, we do not approve the cost recovery, ratemaking, and revenue requirement proposals as presented by SDG&E at this time" (D.04-06-011, page 41)

Ordering Paragraph #8 of D.04-06-011 directed SDG&E to file advice letters, or tariffs, as appropriate and necessary to implement the orders, conclusions, and results reached in that decision regarding SDG&E's Grid Reliability request for proposal (RFP.)

Accordingly, on September 8, 2004, SDG&E filed AL 1621-E for final approval of the SDG&E/Ramco Turnkey Acquisition Agreement (TAA) and requested approval of associated cost recovery and ratemaking mechanisms.

On January 27, 2005, the Commission issued resolution E-3896 and approved SDG&E's TAA with Ramco. Resolution E-3896 directed SDG&E to file an advice letter prior to the in-service date of the Ramco to true-up the base purchase price and to include detailed supporting documentation showing that the base purchase price adjustments are consistent with the provisions of the purchase Agreement approved in resolution E-3896. The resolution also directed SDG&E to use the currently applicable ROE of 10.37% into the fixed revenue requirement calculation.

The updated fixed revenue requirement associated with the purchase of Ramco is \$505,500.

In accordance with resolution E-3896, on July 26, 2005, SDG&E filed AL 1711-E and requested the Commission's approval for the updated revenue requirement associated with the purchase of a Ramco, including modifications to SDG&E's NGBA and ERRRA. SDG&E indicated that this filing represents the pre in-service date true-up advice letter and it would acquire title and initiate operation of the Ramco CT on or shortly after July 26, 2005.

The updated fixed revenue requirements of \$505,500¹ include changes to the following revenue requirement inputs:

1. Purchase price: The various adjustments to the Ramco purchase price, shown in Attachment B of AL 1711-E, have resulted in a total increase of \$897,700.
2. Escalation Factor: The escalation factors were initially used based on 2nd quarter 2003 Global Insight Forecasts and are being updated in AL 1711-E to reflect the most current forecast, the 1st quarter 2005 Global Insight Forecasts. The escalation factors update resulted in following changes:
 - a. The average monthly fixed O&M costs included in the fixed monthly revenue requirement changed from \$22,600 to \$23,800.
 - b. The materials and supplies cost increased by \$21,600.
 - c. The commissioning and mobilization cost rate base increased by \$10,900.
 - d. Variable O&M non-fuel rate changed to \$5.93 per MWh from \$5.76.
3. In accordance with Ordering Paragraph 3 of Resolution E-3896, the fixed monthly revenue requirement is being updated to reflect the return of equity (ROE) of 10.37%.
4. The net start-up and testing costs updated to reflect actual natural gas prices instead of forecasted costs, the update resulted in a decrease of \$285,200.
5. In service date changed from 6/1/05 to 7/26/05 and revenue requirement was updated to reflect the change.

NGBA and ERRRA were also modified to reflect these changes.

Although Ramco has certified the facility complete, a few outstanding disputes between Ramco and its subcontractors prevented Ramco from promptly closing. SDG&E and Ramco have agreed on how to deal with those disputes.

In addition, Ramco and SDG&E have a pending dispute over the amount of the sales taxes.

1. ¹ The original revenue requirement filed in AL 1621-E was \$520,100.

NOTICE

Notice of AL 1711-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS**Ramco and SDG&E have a pending dispute over the amount of the sales taxes.**

On August 15, 2005, Ramco protested SDG&E AL 1711-E. Currently, Ramco and SDG&E have a dispute over the payment of sales/use tax. Ramco believes that SDG&E should pay \$1.3 million for sales tax while SDG&E believes that it owes only \$4,000 as sales tax. Both parties have agreed to resolve this issue by arbitration per provisions of the contract. SDG&E has not included any sales tax in its current revenue requirement and has requested the opportunity to submit a second updated advice letter filing to update its revenue requirement to incorporate expenses for litigation of this matter and payment to Ramco.

Ramco, in its protest, requests that the commission should include the \$1.3 million in the SDG&E revenue requirement update and that SDG&E should file a second advice letter in the event the dispute would be resolved in favor of SDG&E and reduce its revenue. Ramco states that

"The Commission does not need to decide whether Ramco or SDG&E would prevail in this dispute over the \$1.3 million. However, the Commission should find that it is appropriate to include this disputed amount in the current revenue requirement update so that the update provides a clear picture of the potential total revenue requirement."

Ramco also asserts that the dispute will be addressed through the contract's formal arbitration process unless the parties are able to reach an agreement before that time.

On August 22, 2005, SDG&E filed a reply to Ramco's protest. In its reply, SDG&E states that it is premature at this time to include the disputed amount as part of the revenue requirement and recommended a further update to the advice letter. SDG&E also argues that the inclusion of \$1.3 million at this time as

Ramco proposes would run the risk of charging ratepayers for an additional item which they may not be liable.

DISCUSSION

Energy Division has reviewed AL 1711-E and its attachments and supports approving the updated revenue requirement associated with the purchase of a Ramco, including modifications to SDG&E's NGBA and ERRA. The updated fixed monthly revenue requirement is \$505,500.

Energy Division has reviewed AL 1711-E and finds it in compliance with resolution E-3896. The modifications to NGBA and ERRA are in compliance with applicable rules.

Ramco's protest should be denied.

SDG&E and Ramco have a dispute related to the payment of sales/use tax. Ramco believes that SDG&E should pay \$1.3 million for sales tax while SDG&E believes that it owes only \$4,000 as sales tax. Both parties have agreed to resolve this issue by arbitration per provisions of the contract. SDG&E has requested to submit a second update to its current advice letter after the resolution of this dispute.

Ramco has filed a protest and requested that the commission should include the \$1.3 million in the SDG&E revenue requirement update and that SDG&E should file a second advice letter in the event the dispute would be resolved in favor of SDG&E and reduce its revenue. In its reply to Ramco's protest, SDG&E asked the Commission to deny Ramco's request. Based on the provisions in the contract regarding the arbitration process, SDG&E argues that it is premature at this time to include the disputed amount as part of the revenue requirement.

The Energy Division has reviewed the protest and supports SDG&E's position. The contract identifies two venues for arbitration to address disputes between Ramco and SDG&E, Fast-Track schedule or other which requires a resolution within six (6) months. Section 16.2.3. of the contract states:

"Within sixty (60) days following the Effective Date, Ramco and SDG&E shall agree upon an independent third party mutually acceptable to both Parties (the "Fast-Track" Arbitrator") and an alternate third party (the "Alternate") to decide disputes to be referred to Fast-Track Arbitration as provided in this Section 16.2.3.....Arbitrator or the Alternate, as the

case may be, shall be directed to resolve the dispute within fifteen (15) days of the referral.....”

In addition, Section 16.2.4. of the contract states:

“For matters not involving the Fast-Track Arbitrator or Alternate, the arbitration shall be decided by one (1) arbitrator unless otherwise agreed to by the Parties.....The arbitrator shall render its award within six (6) months after the initial notice and demand for arbitration under Section 16.2.2.”

Therefore, based on the provisions in the contract this dispute should be resolved within six months or earlier. We agree with SDG&E that that the inclusion of \$1.3 million at this time as Ramco proposes would run the risk of charging ratepayers for an additional item which they may not be liable. At that time SDG&E should file an advice letter to update its revenue requirement based on the outcome of the arbitration.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this draft resolution was mailed to parties for comments.

Ramco filed its comments on October 27, 2005. In its comments, Ramco states that, “At the heart of RAMCO’s protest is SDG&E’s responsibility for the payment of sales taxes under the contract approved by the Commission and an understanding that the Commission sought to minimize rate revisions associated with the project...The Commission’s prior Resolution, E-3896, made it very clear that the Commission wanted a full update to be filed *prior* to the in-service date and that it disfavored a succession of subsequent ratemaking updates. For this reason, RAMCO believes that all reasonably anticipated potential costs should be included now to set the total revenue requirement for the project or be borne by their shareholders.” (RAMCO Comments on Draft Resolution E-3953, October 27, 2005)

Ramco argues that the dispute has been live for nearly 6 months and the Draft Resolution’s assertion that it should be resolved through contract’s mediation provisions would not guarantee a resolution within 6 months. Ramco asserts that,

“In July 2005 RAMCO paid that amount to the taxing authorities, thus burdening RAMCO with significant and unexpected cost that has not been repaid for more than 4 months and with slight prospect that this problem will be promptly resolved by SD&E.” (ibid)

Therefore, Ramco requests

“...the Resolution make clear that SDG&E will pay monies due immediately upon conclusion of the mediation.” (ibid)

Absent this clarification, Ramco argues SDG&E would continue to avoid resolving the dispute and making the payment of costs that should have been paid upon the closing of the transaction.

SDG&E filed its reply comments on November 2, 2005. SDG&E states that Ramco reiterates its position originally stated in its protest related to SDG&E’s decision not to include the disputed tax amount in its revenue requirement update advice letter, 1711-E. In response to Ramco’s comments regarding SDG&E’s intentions not to resolve the dispute in a timely manner, SDG&E argues that the actual closing of the project took place on July 26, 2005, approximately 3 months ago-not 4 months ago as mentioned in Ramco’s comments. In addition, SDG&E denies Ramco’s allegations that SDG&E is responsible for the time delay in initiating the arbitration process and moving the dispute forward. SDG&E believes that Ramco should initiate the process because Ramco that is due more payment than it has received. Finally, SDG&E reiterates its original position that the disputed amount should not be included in the revenue requirement at this time.

Energy Division reviewed Ramco’s comments and SDG&E’s reply comments. Energy Division believes that to include any amount for Sales taxes payments in revenue requirement, either the \$4000 SDG&E believes that it owes to Ramco or the \$1.3 million that Ramco believes is the correct amount, would prejudice the outcome of the dispute.

In addition, Energy Division does not believe that this Advice Letter is the right venue to address the dynamics of the contract provisions of mediations and arbitrations. The Energy Division encourages both parties to work together in good faith to resolve this dispute in a timely manner. The Energy Division at this point has no information to judge if SDG&E has not acted in good faith to resolve this dispute in a timely manner. As SDG&E stated in its reply comments it has been only three months since the closing of the project and there is still time to resolve this dispute in a timely manner. Therefore, to include punitive language in the resolution at this point would not be appropriate.

Therefore, Ramco’s request to alter resolution is denied.

FINDINGS

1. Resolution E-3896 directed SDG&E to file an advice letter prior to the in-service date of Ramco to true-up the base purchase price and to include detailed supporting documentation showing that the base purchase price adjustments are consistent with the provisions of the purchase Agreement approved in resolution E-3896.
2. On July 26, 2005, SDG&E filed Advice Letter 1711-E, in compliance with Resolution E-3896.
3. On August 15, 2005, Ramco protested Advice Letter 1711-E and requested that the commission should include the \$1.3 million for sales tax, which is currently the subject of dispute between Ramco and SDG&E, in the SDG&E revenue requirement update.
4. On August, 22, 2005, SDG&E filed a timely reply protest requesting the Commission to deny Ramco's request.
5. It is premature at this time to include the disputed amount as part of the revenue requirement. Ramco's request should be denied.
6. Based on the outcome of the arbitration, SDG&E should file an advice letter to update its revenue requirement.
7. Ramco filed its comments on October 27, 2005 and reiterated its request in its protest. In addition, Ramco requested the Commission to alter the resolution to clarify that SDG&E should pay Ramco monies due upon the conclusion of the mediation.
8. SDG&E filed its reply comments on November 2, 2005 and asked the Commission to deny Ramco's request.
9. The Energy Division denied Ramco's request to alter the resolution.

IT IS ORDERED THAT:

1. We approve SDG&E's Advice Letter 1711-E.
2. Based on the outcome of the arbitration, SDG&E should file an advice letter to update its revenue requirement

This Resolution is effective today.

DRAFT

Resolution E-3953
SDG&E AL 1711-3/SKH

November 18, 2005

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 18, 2008; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director